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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

V.

19 CR 472 (PAC)

SALVATORE TAGLIAFERRO,

Defendant.

New York, N.Y.
November 9, 2020
3:30 p.m.

Before:

HON. PAUL A. CROTTY,

District Judge

APPEARANCES (Telephonic)

AUDREY STRAUSS

Acting United States Attorney for the
Southern District of New York

THOMAS MCKAY

JARROD SCHAEFFER

MICHAEL BACHRACH
RICHARD ROSENBERG

Attorneys for Defendant

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1 (Via telephone, case called)

2 DEPUTY CLERK: Counsel for the government, please
3 state your appearance.

4 MR. MCKAY: Good afternoon, your Honor, Tom McKay and
5 Jarrod Schaeffer on the line for the government.

6 THE COURT: Good afternoon.

7 MR. ROSENBERG: Good afternoon, your Honor, Richard
8 Rosenberg for Mr. Tagliaferro.

9 THE COURT: Good afternoon, Mr. Rosenberg.

10 MR. BACHRACH: Good afternoon, your Honor, Michael
11 Bachrach also for Mr. Tagliaferro.

12 THE COURT: Mr. Bachrach, how are you?

13 MR. BACHRACH: Good. Thank you, your Honor.

14 MR. ROSENBERG: Mr. Tagliaferro is here also.

15 THE COURT: Mr. Tagliaferro, how are you?

16 THE DEFENDANT: Good, thank you, your Honor.

17 THE COURT: We received a letter from
18 Mr. Tagliaferro's attorneys. Who will speak?

19 MR. ROSENBERG: We'll let Mr. Bachrach start off, if
20 that's all right with the Court.

21 THE COURT: That's fine.

22 Mr. Bachrach?

23 MR. BACHRACH: Thank you, your Honor. I would ask the
24 government to correct me if I state anything wrong, because I
25 will really be repeating what they informed us.

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1 As your Honor knows, we have a pending continuance
2 motion. And although the parties disagree on whether or not
3 there might be Fifth or Sixth Amendment issues challenges that
4 may have merit, the parties do agree that were we to start on
5 December 14, there's a likelihood that this trial would go into
6 the Christmas holiday at the very least.

7 What the government informed defense counsel on Friday
8 that is new, as least new to us, is that they just learned
9 that, according to the expert consulting with the Court -- not
10 your Honor, but with the district, I should say -- there's been
11 a recommendation that all trials taking place during the
12 two-week period immediately following Thanksgiving and
13 immediately following Christmas will be canceled or
14 rescheduled. Due to the belief of the expert that these could
15 be super spreader events, it's my understanding -- and again, I
16 ask the government to correct me if I'm wrong, but a decision
17 has been made by the chief judge to cancel trials during those
18 two periods. Now our trial does squeeze in, to an extent, in
19 that window, although again, if we go into Christmas as
20 expected, that would mean taking off two weeks and having a
21 two-week break in the middle of the trial.

22 But also one thing I add to that, which is a concern
23 to the defense, is also Hanukkah, which will begin on
24 December 10 and last for eight days, of course, your Honor,
25 until December 18. And I don't know if that was considered by

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1 the court's expert or not, but I would see no reason why
2 Hanukkah would be any less of a super spreader event than
3 Thanksgiving or Christmas, particularly in light of what
4 happened over Rosh Hashana, the last major Jewish holiday,
5 which did turn into, regrettably, a super spreader event in
6 various parts of the city.

7 So it's the defense position, and I don't think the
8 government opposes it in any way, but the defense position is
9 that that's another reason why we think it would be appropriate
10 to reschedule the trial to the first quarter of 2021, your
11 Honor.

12 THE COURT: Does the government want to be heard,
13 Mr. McKay?

14 MR. MCKAY: Briefly, your Honor. To be clear, what
15 Mr. Bachrach reported is a faithful representation of what we
16 told him, so I should be clear that that's based on now sort of
17 secondhand from what we have been told by the chief judge and
18 down to our office. Obviously your Honor probably has more
19 direct information about exactly what the rules are going to
20 be, but it was our understanding that although we would be
21 permitted to start on December 14 since that's more than two
22 weeks after Thanksgiving, that if in fact we ran past the
23 Christmas holiday there would need to be a two-week break.

24 So we were concerned that if we rested on -- we note
25 that Christmas Eve is a Court holiday, so if by Wednesday,

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1 December 23rd, the trial wasn't complete, there would then be a
2 risk it would be adjourned until something like Monday,
3 January 11, or thereabouts. And it struck us that that was of
4 concern for both parties because no one likes to seat a jury
5 and then have them leave for several weeks. So we wanted to
6 bring that to the defense's attention and obviously to the
7 Court's attention as well, although the Court may know exactly
8 what the schedule would be in light of those new
9 recommendations.

10 THE COURT: Right now we're scheduled for trial
11 starting on the 14th of December, and I agree with everybody
12 that unless we are reasonably assured we can get the trial in
13 by the 23rd, we would go over, and that would be inconvenient
14 and a burden on everybody. So the idea we'll start the trial
15 on December 14th is off the table.

16 The way I read our chief judge's instructions is that
17 in order to avoid super spreader events for the two weeks
18 following the New Year's celebration there will be no trials,
19 that's the week of January 3rd and January 10. We could start
20 the trial without running afoul of our expert consultant's
21 advice to avoid super spreader events Monday, January 18, and I
22 think that's the reason.

23 MR. ROSENBERG: Could I be heard? Richard Rosenberg?

24 THE COURT: Yes.

25 MR. ROSENBERG: Could I state the obvious, that we're

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1 having a tremendous spike in cases that are being reported
2 every day. This is minimally distracting if not -- not only
3 distracting but chilling for myself and my concerns about
4 people similarly situated to myself, including Mr. Tagliaferro,
5 who has those comorbidities as well. And if I may just
6 suggest, your Honor, I think, from what I am understanding from
7 the media, from Dr. Gottlieb, former FDA chief who is saying
8 that 120,000 cases a day is vastly underreporting what the
9 actual number is, and he places it close to actual numbers of
10 half a million a day, and that's supposed to grow as we're
11 going further into the winter.

12 I was going to suggest a first quarter trial in late
13 February when we -- I understand there's great news today about
14 a vaccine, and I will be one of the first on line if I can get
15 it to take that vaccine, but I think just to be in a comfort
16 zone and not feel like we're going into the lion's den of virus
17 in January and December, which is supposed to be a very wicked
18 month for the virus, I was going to suggest a late February
19 date, Judge.

20 THE COURT: Does the government want to be heard?

21 MR. MCKAY: Judge, I think before Mr. Rosenberg began
22 I think you said the earliest we could start is Monday,
23 January 18.

24 THE COURT: Correct.

25 MR. MCKAY: The government would be prepared and happy

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1 to go to trial on Monday, January 18, or anytime thereafter.
2 If the Court would like to schedule it for a February date, as
3 Mr. Rosenberg requests, I don't think we have an opposition to
4 that, but we are ready for trial, the parties are getting ready
5 for trial, so January the 18th would also be fine for the
6 government.

7 THE COURT: Mr. Rosenberg, I'm going to overrule your
8 objection and we're going to schedule the trial for January 18.
9 The Court has an open mind if these predictions that you make
10 materialize, but right now I think that we're prepared -- got
11 to be prepared to go to trial on Monday, the 18th of January,
12 2021.

13 MR. ROSENBERG: Very well, Judge. Do you want to set
14 a date for pretrial conference then?

15 THE COURT: We'll set the date for pretrial conference
16 on Monday, January 11.

17 MR. MCKAY: And Judge, we had some dates for pretrial
18 motions in limine and filings and the like. We request that
19 those be adjusted to reflect the new trial date. We would be
20 happy to confer with defense counsel and propose dates for
21 those filings that are consistent with the schedule that you so
22 ordered last time.

23 THE COURT: That's fine. When you do your schedule,
24 just make sure I have enough time -- that you have enough time
25 for the papers to be submitted to me so that I could review

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1 them and have a decision for you by the time of the pretrial
2 conference on the 18th. Have the materials in by the 11th.
3 That will give me a week to work on the papers and I don't have
4 to anticipate what you want me to decide, and get a schedule in
5 to me before -- get the materials in by Thursday.

6 MR. ROSENBERG: There's some background noise, I
7 couldn't hear what date your Honor wanted us to get the papers
8 in by.

9 THE COURT: I was thinking aloud. Get them in by
10 Thursday, the 7th. That will give me enough time to review the
11 papers before the final pretrial conference on the 11th.

12 MR. MCKAY: Thank you, your Honor. Did you have a
13 specific time on the 11th for that pretrial conference?

14 THE COURT: David, what time?

15 DEPUTY CLERK: 4:00 p.m.

16 THE COURT: 4:00 p.m.

17 MR. MCKAY: Thank you, your Honor.

18 MR. ROSENBERG: Thank you, your Honor. I hope
19 everyone stays well and healthy.

20 THE COURT: Thank you very much, Ms. Rosenberg.

21 MR. ROSENBERG: I hope everyone has a Happy
22 Thanksgiving, a Happy New Year and Merry Christmas.

23 THE COURT: Happy Hanukkah. Thank you very much.

24 (Adjourned)